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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 103

THE GOSPEL ARMY, a corporation,
Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,
Appellees.

Opening Brief, Statement of Jurisdictional Grounds and Errors to Be Urged.

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Appellees.

APPELLANT'S OPENING BRIEF.

Opinion Below.

The Opinion of the State Court of Last Resort is reported in 28 Cal. (2d) 232.

Grounds on Which Jurisdiction of This Court Is Invoked.

The case involves the validity of an Ordinance No. 77,000, entitled "Charities and Relief," incorporated in the Municipal Code of the City of Los Angeles as Sections 44.01 to 44.19, inclusive, and 24.01 thereof against plain-

tiff's challenge that the same violate all guarantees of the 14th Amendment to the Federal Constitution.

The State Supreme Court upheld the constitutionality of the ordinance as against appellant's claims to the contrary, which claims were: That certain provisions of the ordinance on their face and as applied to appellant deprive appellant of property without due process of law and are unreasonable, arbitrary and unduly burdensome; that other provisions are arbitrarily discriminatory and deny appellant, and all others similarly situated, the equal protection of said law, in violation of said 14th amendment to the Federal Constitution; that the ordinance violates the First and Fourteenth Amendments to said constitution, in that it creates and constitutes prohibited prior restraints upon the exercise of the right of freedom of religion; that said ordinance unreasonably and arbitrarily classifies the religious activity of soliciting donations of money and goods by religious organizations for their religious activities, as charitable and not religious if any portion thereof is to be dispensed as charity, and it arbitrarily and unreasonably classifies as a promoter any solicitor for a religious organization who receives any compensation for his services and subjects him to many onerous, time-consuming burdens, such as paying a heavy license fee and posting a bond in the sum of $2000.00, not required of other solicitors, thus infringing the rights of freedom of religions, the equal protection of the laws and takes property without due process of law; that said ordinance penalizes all violations of its provisions and thus violates the rights of personal liberty and religious freedom;

That it delegates to administrative officers the power to arbitrarily refuse to grant a permit or license to solicit to

any applicant; and delegates to such officers arbitrary power to endorse and thereby exempt charitable organizations and their solicitors from all of many burdensome, time-consuming requirements of the Ordinance to which appellant and other similar organizations and their solicitors are subjected; that as to such delegations of power and several others of like import no standard is provided to govern such administrative officers in making determinations, and are thus violative of the due process and equal protection of the law clauses of said 14th amendment;

That said Ordinance is, and many of its provisions are, unreasonable, unnecessarily burdensome, even if solicitation for charity could be classed as secular, and thus violative of said due process clause;

That the decision of said State Supreme Court erred in holding that none of the foregoing, and other similar contentions of appellant possess any merit, and appellant, in its petition for rehearing, appellant claimed and now asserts that in so holding the decision of said State Court itself has denied to appellant the equal protection of the laws, the right to exercise religious freedom and the right to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Constitution of the United States.

Thus, jurisdiction is sustained by Sec. 237(a) of the Judicial Code, 28 U. S. C. A. Sec. 344(a) and (b), 8 F. C. A. Title 28, Sec. 344(a).

Concise Statement of the Case.[1]

Appellant is a religious organization which maintains a mission where religious services are conducted; it distributes religious tracts and the New Testament free to the public; gives aid to the needy; collects salvage and money from the public as funds to carry on said activities, and some of the salvage is sold in its second-hand stores, and the money received pays overhead expenses, including compensation to the manager and solicitors, and the rest goes to the plaintiff's treasury. [T. R. p. 79.] Solicitors of money exhibit a printed card saying that the bearer is authorized by plaintiffs to solicit money, food and clothing, etc., to aid the Gospel Army to carry on its religious mission and evangelical work among the under-privileged. After expenses of solicitation are paid about fifty per cent remains and is used for said purposes. [T. R. p. 80.]

The Ordinance of the City of Los Angeles purporting to regulate "Charities and Relief", above identified, provides the legal subject matter of this case. Eliminating provisions of lesser consequence as respects the issue involved herein, in the interest of conciseness, the following appear essential to the consideration of the questions presented:

Section 12 of the Ordinance involved reads:

> "No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person

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[1]For brevity, abbreviations will be used, as follows: "T. R." means "Transcript of Record"; "App." refers to the "Appendix, Exhibit A," attached hereto, and "S. J." to "Statement of Jurisdiction"; "The Ordinance," means the "Charities and Relief Ordinance," involved herein, and "Section" refers to a section of the Ordinance.

solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited." [App. p. 10.]

Section 44.05 provides the procedure for securing the Information Card. (Permit.) It provides:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association with-

in the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." [App. pp. 5-7.]

Section 44.06 authorizes further preliminary procedure in securing permission to solicit. It provides: that the "Board of Social Service Commissioners" of said city, may, if "in its opinion" the "Notice of Intention does not disclose sufficient information for the public concerning the facts hereinbefore required" concerning "The person or association" making such solicitation or for whom it is made, "then, upon the request of said Department, there shall be filed, in writing", within 48 hours after said request, such additional information as said Board requires thereon, and "if requested" the "Notice of Intention and additional information shall be signed by the association as well as the application for permit." [App. p. 7.]

Of similar import is a provision of Section 44.03. It authorizes "the Department" to "investigate the allegations of Notice of Intention, or any statement or report"; to "have access to and inspect and make copies of all books, records," etc. of the applicant for permit or those for whom the solicitation is to be made, and to require such additional information as "in the opinion of the Board" shall "be of assistance to the public to determine the nature and worthiness of the purpose for which solicitation is made," and the same section requires that solicitors must have the written authorization of the organization for whom they solicit. [App. pp. 4, 5.]

Section 44.08 limits the use of the Information Card as follows:

> "No person shall solicit any contribution for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer." [App. p. 8.]

Another section, 44.02, empowers the Board to "publish the results of any investigation which the Department of Social Service may have made relative to the application for permit to solicit and information acquired from an inspection of the books of the person or association on whose behalf solicitation is made," and to give "such publicity to any such results by such means as may be deemed best to reach the general public and persons interested." [App. pp. 3, 4.]

Section 44.03 authorizes "the Department" to issue to all solicitors Information Cards which cards shall show:

"(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

"(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

"(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made; * * *"

Other sections regulate the use of the Information Card and the method of solicitation. Section 44.12 directs that the solicitor exhibit to the prospective donee the Information Card and "allow him sufficient opportunity to read same" or read it to him, "before accepting any contribution solicited."

Section 44.15 compels the solicitor to tender to each donor a written receipt signed by the solicitor "which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person

making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for." [App. pp. 4, 5.]

Section 44.16 segregates solicitations "solely" for religious, evangelical or missionary purposes from all others which are classed as charitable. To be exempted from the foregoing provision and all others of the ordinance relative to solicitors and solicitations from the public it is provided in Section 44.16 of the ordinance that such solicitations must be "made solely for evangelical, missionary or religious purposes." [App. p. 12.]

Section 44.16 reads:

"The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitations made upon the premises owned or occupied by the Association upon whose behalf such solicitation is made . . . nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes." [App. p. 12.]

Solicitors have certain duties while soliciting. (Section 44.14.)

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the

Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation." [App. p. 10.]

The foregoing provisions deal with one class of solicitors only as described by the ordinance.

Section 44.01 of the ordinance classifies solicitors as "solicitors" and "promoters", the distinction being that promoters are and solicitors are not paid. [App. p. 2.]

Under Section 44.19, promoters must be licensed, pay a license fee of $25.00 and post a bond of $2000.00. To secure a license the promoter must apply in writing for a license and set forth in addition to such information as may be required by the Board. [App. pp. 13, 14.]

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." [App. pp. 13, 14.]

(5) Investigation:

"The Board shall examine such application and shall make such further investigation of the applicant and its, or his, affairs as the board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the applicant is of good character and reputation, or that every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation . . . . (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitations, such applicant may make with the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true . . . and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions." [App. pp. 16, 17.]

Section 24.01, containing Second-hand and Junk Dealers regulations in substance[2] provides as follows:

"Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags,

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[2]This summary of the provisions of Section 24.01 is taken from the State Supreme Court's opinion and represents its construction of such provisions, which it held valid and constitutional. [T. R. pp. 80, 81.]

sacks, bottles, cans, paper, metal or other articles commonly known as junk'. A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01,' (1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsectio n(a) of this Section *Section* shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in

which such permit was granted * * * The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; * * *. Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought * * *. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.' Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the arti es received by them 21 days before selling them. The period prescribed for junk dealers is 3 days * * *" [App. pp. 19-25.]

Section 1, of an amendment enacted January 21, 1943, regulates the hours during which the businesses defined in subsection (a) which has been quoted, which regulation excludes certain holidays and generally the hours "between 8:00 o'clock p. m. Saturday and 8:00 o'clock a. m. the following Monday." [App, p. 26.]

The case was tried in the State Superior Court on the amended complaint which alleged that the plaintiff Rescue Army was engaged exclusively in promulgation of its religious beliefs by literature and word of mouth, and in procuring donations of money and articles of value in furtherance of its religious activities; that the defendants, appellees herein, have threatened and are threatening criminal prosecutions against the plaintiff unless it complies with the provisions of said Charities and Relief Ordinance of the City of Los Angeles, and that if plaintiff is required to obtain a permit and pay for a license to solicit donations to be used in the furtherance of its religious activities, it will amount to prior restraint on the exercise of religious activities and infringe its right of freedom of religion under the First and Fourteenth Amendments to the Federal Constitution; and that unless defendants are enjoined from carrying out such threats, plaintiff's said rights will be infringed and it will suffer irreparable injury. [T. R. pp. 1-3.]

The answer in effect denies that plaintiff's activities are religious as a matter of law, and avers that before plaintiff can continue its activities it must secure a permit from the Department of Social Service of the defendant city

and that plaintiff and its officers and employees must comply with Sections 44.05 and 44.06 of said ordinance and all sections thereof, including Section 24.01 thereof and that defendants have so notified plaintiff. [T. R. pp. 4-6.]

The trial court found that plaintiff is engaged exclusively in promulgation of its religious beliefs and in procuring donations as alleged in furtherance of its religious activities; that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendants pertaining to charities and relief and to continue such religious activities must apply for and receive a permit from said Board; and that said Board has full power under said Ordinance to pass on and reject all such applications and that defendant Hoye has demanded that plaintiff pay said city for a license to operate plaintiff's store where donated articles are sold and the proceeds are used in furtherance of said religion and defendants have and are threatening plaintiff with criminal prosecutions for alleged violations of said Ordinance. [T. R. p. 9.] Said court found that if plaintiff is required to obtain a permit and pay for a license to solicit and receive donations in furtherance of said religious activities, it will amount to a prior restraint on the exercise of such activities and an infringement "upon the free exercise of their religious liberty" under the First and Fourteenth Amendments to the Federal Constitution and that plaintiff will suffer irreparable injury therefrom, and issued its injunction against defendants accordingly. [T. R. pp. 10, 11.]

The Issues as Viewed and Contested by the Parties on Appeal.

Thereupon defendants duly appealed to the State Supreme Court from said judgment. [T. R. p. 13.]

In defendants' briefs on appeal, it was claimed that all of the provisions of said Ordinance, including said Section 24.01, are binding on plaintiff and its employees and that no provision thereof violates the First or Fourteenth Amendment to the Federal Constitution; that the City's Board of Police Commissioners has jurisdiction over plaintiff's store, and that upon the facts found by the trial court, the judgment is erroneous because the ordinance involved is "merely regulatory" and constitutes a "registration system." (S. J. pp. 24, 25.)

This contention was applied to all sections of said Ordinance except Section 24.01 and it was claimed that plaintiff's secondhand store is purely a business and not a religious activity. (S. J. p. 25.)

Defendants' said closing brief contends that the "fee" required of applicants for Information Cards by Section 44.03 and for the promoters license (Sec. 44.19), are not for revenue but merely for regulation, and claims that where charitable solicitations contemplate "payment of a percentage or commission to its (the organization's) agents," as is done by plaintiff, prohibited prior restraints upon the exercise of religious liberty are valid and necessary to protect the public "from fraudulent solicitations for charitable or religious purposes." (S. J. p. 32).

The Gospel Army, in its brief attacks, as violative of the right of freedom of religion, and unwarranted prior restraints upon its exercise, all of the sections of the ordinance which defendants' brief especially classes as "regu-

latory" and creating a registration system, to-wit, provisions for the Notice of Intention, the issuance of Information Cards, for investigation by the Board and the Department, receipts to be given by solicitors, rendering reports and keeping and filing accounts, fees for permission to solicit and filing of bonds (S. J. p. 28.)

It assails as a denial of the equal protection of the laws and unreasonable discrimination, the definition of the term "promoter" in Section 44.01 of said ordinance and provisions of Section 44.18 which imposes upon promoter-solicitors far greater burdens and restraints than are elsewhere placed upon ordinary "solicitors," some of which are that the promoter-solicitor must apply for a license, pay a $25.00 license fee, post a $2,000.00 bond, hold the license subject to the condition that it may be revoked at any time if the "Board finds that any act or omission of the promoter or his agents" in soliciting has been unfair, unjust, inequitable or fraudulent." (S. J. p. 28.)

It points out that said section 44.18 violates the same constitutional guarantees by providing

> "that no person who is a *bona fide* paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this Article." (S. J. pp. 28, 29.)

It argues that plaintiff's property rights are involved in this case; that its property right in its store are vio-

lated by the provisions of the Ordinance as applied thereto in contravention of said Fourteenth Amendment and by reason of prohibitive restraints upon solicitations for donations, relying on *In re Darte*, 172 Cal. 47; *Murdock v. Pennsylvania*, 319 U. S. 104, and *Cantwell v. Connecticut*, 310 U. S. 296. (S. J. pp. 28-30.)

Plaintiff's brief argues from the reporter's transcript that

> " . . . from the 'testimony of the defendants' witnesses it appears that the defendants classed Mrs. Colbert, who conducts said store for plaintiff, as a 'promoter' and demanded that a promoter's license be secured for her; the posting of a $2,000 security bond for or by her and a license fee of $25.00 be paid; that defendants, through their officers, had asserted that 'the Board claims the right to refuse' to issue a license to a promoter and to refuse an Information Card to a solicitor after a Notice of Intention is filed." (S. J. p. 30.)

It thus appears that the parties treated the case as involving the validity of the entire city ordinance, and in the opinions of the State Supreme Court the same view is taken.

The Scope of the Issues as Passed Upon by the Supreme Court.

The majority opinion is by Justice Traynor. Justice Carter wrote a dissent, concurred in by Justice Schauer and Justice Edmonds wrote a separate dissenting opinion.

The majority opinion holds that charitable activities of a religious organization may be severed by law from the evangelical and missionary activities of a religious organization even though their integration is such that the former are in furtherance of the latter. [T. R. pp. 65-70.]

Justice Carter, dissenting, states "that freedom of religion cannot be whittled away by carving out segments of religious activities and relegating them into the realm of secular affairs" and that the utter impossibility of any severance is made plain in the application of Dart, 172 Cal., 57. [T. R. p. 106.]

Justice Edmonds in dissenting also relies on the *Dart* decision and insists that the Constitutional guarantee "gives as much, if not greater protection to religious endeavors which include ministrations to human suffering" than to those which do not [T. R. p. 131.]

The majority opinion holds that such segregation is made by the ordinance involved and is warranted by the need for protection of the public against fraudulent solicitations for purported charitable purposes. [T. R. p. 66.]

Justice Carter quotes *Schneider v. Irvington*, 308 U. S. 147, to the effect that frauds may be denounced and punished as offenses against the law and the need for their prevention does not empower a municipality to abridge freedom of speech or of the press, and he asserts that the same is true of religious freedom. [T. R. p. 103.]

Having determined that such segregation by the Ordinance involved is constitutional, the opinion, in considering attacks by appellant herein on its validity as an entirety and its separate sections regards them as regulations of secular business enterprises. So evaluated are Sections 44.01 to 44.19, inclusive, and the opinion holds that "nothing unduly burdensome or unreasonable in any of these provisions" is found. [T. R. p. 56.]

After analyzing and denouncing as unreasonable and delegations of arbitrary power provisions in the sections regulating solicitations: 403, 416, 412, 406, 402, 405 and 415 Justice Edmonds asserts that "if the practice of religion may be legally isolated beyond the contaminating reach of charity" the legislation he had discussed imposes "unnecessary and unreasonable restrictions upon the use of property or the pursuit of useful activities." [T. R. p. 131.]

Justice Carter declares that if the author of the majority opinion had discussed in detail the separate sections it is doubtful that he would say "that none is unduly onerous. [T. R. p. 109.] He then analyzes Sections 44.05, 44.06, 44.03, 44.02, 44.04, 44.08, 44.10, 44.11, 44.12, 44.13 and 44.15 and declares that as "a group" a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive, and he says: obviously, they do unreasonably obstruct and delay the collection of funds. [T. R. pp. 110-112.]

He states that the provisions of the Ordinance are "still more restrictive" as to "so-called promoters." Referring to Section 44.19, the promoter section, Justice Carter says:

> "The comment which has been made concerning the unreasonableness of the ordinance provisions re-

lating to solicitors applies with double force as to promoters.'" [T. R. pp. 112-115.]

The majority opinion asserts broadly concerning all sections of the ordinance, except Sec. 24.01:

"The classifications effected by the ordinance and the standards provided are adequate." [T. R. pp. 59-60.]

Justice Edmonds, dissenting, concludes that the provisions of Section 44.16 delegates arbitrary power to the Board in the matter of giving such publicity as it "may deem best" to solicitations in whole or in part charitable on behalf of a religious organization, as to facts derived from its own investigation. [T. R. p. 127.]

He states that the terms of the ordinance relating to the issuance of a permit are indefinite [T. R. p. 128]; that a provision in Section 44.06 similar to that in Section 44.16, above mentioned "gives opportunity for undermining public confidence and provides a vehicle for official propaganda which may do irreparable damage to the solicition purely religious." [T. R. p. 129.]

He concludes that no standards or limitation is provided for the data to be printed upon the Information Card and the Board may arbitrarily disapprove of a worthy charity. [T. R. p. 133.]

The majority opinion holds that the provisions of Section 24.01 regulating Secondhand stores and Junk Dealers are valid "for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity, and the court asserts that such provisions" are reasonable, and the standards prescribed are adequate. [T. R. p. 83.]

Justice Edmonds, in dissenting, states that the Board has power under the wording of the ordinance to "grant or withhold official favor for any reason which whim or fancy may dictate." He says no qualifications are specified as a standard to guide it, and he declares that the ordinance is an unlawful interference with plaintiff's right of property which, if not enjoined, will cause irreparable injury. [T. R. pp. 135-136.]

The majority opinion states that Information Cards are issued automatically upon the filing of the required information by the applicant and payment of four cents for each card, and "the department is given no authority to withhold such cards when these requirements were met." [T. R. p. 85.]

Justice Edmonds declares:

> "There is neither requirement nor even suggestion in the Ordinance to support the above statement" [T. R. p. 128.]

Concerning Section 44.01, containing the provisions concerning "promoters" the court holds that the classifications effected therein and the standards are adequate. [T. R. p 87] It decides that the Board has no discretion to withhold a promoter's license if the applicant's good character and reputation and financial responsibility are established and the required bond is filed [T. R. p. 85], and that the requirement that the board revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is not vague or uncertain. [T. R. p. 97.]

Justice Carter states that the last named provision, except the ground that practices have been "fraudulent" are

vague, uncertain, and may well result in religious censorship. [T. R. p. 120.]

Justice Edmonds regards both of the provisions approved by the majority opinion as "far beyond the permissible bounds fixed for regulation of a religious purpose." [T. R. p. 134.]

The majority opinion holds that although empowered to favor some applicants for a permit to solicit and discriminate against others, it may be assumed that the Board will not whimsically or capriciously deny an application. [T. R. p. 86.]

Justice Edmonds points out that

> "This same argument was advanced by the State in Cantwell v. Connecticut, *supra*, and summarily "rejected." [T. R. p. 128.]

Errors Intended to be Urged.

It is appellant's intention to urge each of the errors set forth in the "Transcript of Record." However, being uncertain as to whether this statement, alone, complies with Rule 27, said assignment, abbreviated where possible, is repeated.

The California Supreme Court in its opinion, decision and judgment in this case, held concerning the validity of the Ordinance involved or sections thereof as hereinafter stated, and thereby erred and violated guarantees of the 14th Amendment to the Federal Constitution, as follows:

I.

The Court erred in holding that said ordinance does not unreasonably, arbitrarily and unlawfully violate the equal protection of the laws clause of the Fourteenth

Amendment to the Constitution of the United States as applied to said Gospel Army, and to one of its solicitors, Mrs. Colbert, and to all religious organizations and solicitors situated similarly to said to said last-named parties, by its definition of the term "promoter" and by arbitrarily creating a class of solicitors designated as "promoters" and by exacting from such promoters higher fees for permits or licenses than are required of other solicitors, and by requiring the execution of a prohibitively high indemnity bond by them whereas no bond is required of other solicitors, although there is no reasonable, logical or substantial basis for such distinctions.

II.

The said Court erred in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although no provision of said ordinance directs that this be done.

III.

The said Court erred in holding that the provisions of Section 44.02 of the said ordinance which authorize said Board to "recall every such Information Card and amend or correct the same" and to require the person who files it, or association on whose behalf the Notice of Intention was filed, to return and present the recalled Information Card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors

and associations on whose behalf solicitations are made to the exercise of the right of freedom of religion, and the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

IV.

The said Court erred in holding that Section 44.02 is reasonable, not burdensome and valid in empowering the Board to publish the results of investigations by the Department pertaining to applications for permits to solicit and the allegations of "Notice of Intention" and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion, in contravention of the due process clause of the Federal Constitution.

V.

The said Court erred in holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an Information Card (permit to solicit) said Department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Court erred in failing and refusing to hold that said provision is a nullity in that it delegates to the Department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide its decision and thus that it violates the due

process clause of the Federal Constitution; and to hold that said enactment creates two classes of permits and charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth amendment to the Federal Constitution.

VI.

Said Court erred in holding valid and constitutional the provisions in said Section 44.03 thereof, which provides that upon the filing of a Notice of Intention to solicit with said Department, before acting on said petition, said Department is authorized to investigate the allegations of the Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court erred, in failing and refusing to hold that each of said acts so authorized to be done by said Department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are unlawful prior restraints upon the exercise of the right of freedom of religion, thus contravening the said Fourteenth Amendment.

VII.

Said Court erred in holding valid the provision in said Section 44.03 which authorizes the said Department, in issuing an Information Card, to set forth therein information secured by its independent investigation concerning the applicant; of which he has not been apprised or had opportunity to refute or explain, which "in the opinion of the Board shall be of assistance to the public to determine the nature and worthiness of the purpose for

which the solicitation is made," erred in failing and refusing to hold that said provision violates the due process clause of the Federal Constitution for the following reasons:

It empowers the defendant Board and Department to deprive the applicant of a property right and property without due process of law; it provides no standard by which said Board and said Department shall decide what information will be of assistance to the public to determine the nature or worthiness of the charitable purpose involved; it constitutes an unreasonable and burdensome prior restraint on the exercise of the right to solicit for charity; and that as applied to appellant and its solicitors, and their activities it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

VIII.

Said Court erred in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities provisions of Section 44.05 of said ordinance, which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, there shall have been filed with the Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:
>
> "(a) The purpose of the solicitation and use of the contribution to be solicited;
>
> "(b) A specific statement, supported by reasons and, if available, figures, showing the need for the [fol. 234] contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof; [fol. 235]

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and you will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Court erred in failing and refusing to hold that each of said provisions, as applied to appellant and its solicitors and their solicitations, is unreasonable, burdensome and a time-consuming previous restraint upon the exercise of the rights above set forth.

IX.

Said Court erred in holding adequate and valid the provision contained in Section 44.06 which empowers said Department to decide that a Notice of Intention "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made, and to thereupon require that there be filed within 48 hours "such additional information as said Board may require upon the foregoing subjects," and said Court erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide captiously and arbitrarily and unreasonably, and provides no standard to control the decision authorized in said provision.

X.

Said Court erred in holding that the provisions of Section 44.06 of said ordinance are valid and not burdensome, which require that the applicant for permission to solicit "must file with the Notice of Intention, a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the

Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Court erred in failing and refusing to hold that said provisions are violative of the due process clause of said Fourteenth Amendment, because said provisions each create and constitute a burdensome bar and a prohibited previous restraint upon the exercise of the right of all to freely engage in religious and charitable activities.

XI.

Said Court erred in holding that the provisions of Section 44.12 are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity alone or for charity in furtherance of religion, which provisions require that solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the appellant and all of its solicitors, and of their rights to engage in charitable activities, and to acquire property, thus contravening the Fourteenth Amendment to the Federal Constitution.

XII.

Said Court erred in holding that the provisions of Section 44.14 are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report, stating the contributions secured, "in detail all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Gospel Army and its solicitors and constitutes prohibited prior restraints upon the exercise of their rights of religious freedom and the right to be charitable. [fol. 239]

XIII.

Said Court erred in holding that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:
>
> "(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purpose the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

And said Court erred in failing and refusing to hold that the foregoing provisions do not constitute a prohibitive prior restraint upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities by appellant and its solicitors and therefore are violative of the Federal Constitution, amendment fourteen thereof.

XIV.

Said Court erred in holding reasonable, valid and constitutional the provision in Section 44.16 which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious even though they are in furtherance and an integral part of religion and other religious activities, and said Court erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the 14th amendment to the Federal Constitution and its guaranty of freedom of religion.

XV.

Said Court erred in upholding as valid, constitutional and not burdensome or unreasonable the provision of Section 44.16 which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its finding thereon in such manner as it may deem best to advise the public of the facts of the case."

And said Court erred in failing and refusing to hold that the foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise, and that it does not arbitrariiy create a prohibited prior restraint upon the exercise of said right and the right of appellant to acquire property, and deny appellant the equal protection of the laws as guaranteed by said 14th Amendment.

XVI.

Said Court erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property guaranteed by said 14th amendment, of religious organizations and especially such rights of the appellant and of its solicitors, in that it excludes from the exemption, solicitations of money and goods if any

part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor.

XVII.

Said Court erred in holding that the provision of Section 44.19 which authorizes the Board to require that applicants for license to solicit as promoters furnish "such information as may be required by the Board" is reasonable, not burdensome or vague in its delegation of power and is valid and constitutional, and it erred in failing and refusing to adjudge that said provision constitutes an unreasonable and burdensome prior restraint upon the exercise of the rights of freedom of religion and the right to dispense charity, in contravention of the said 14th amendment and is violative of the due process clause thereof because it gives the Board unrestricted power to make requirements prerequisite to granting a promoter's license of an unreasonable, arbitrary and capricious character, and to deny such licenses if such requirements are not met; and, said Court erred in failing and refusing to hold that the foregoing provisions are harsh, unreasonable, and burdensome as applied to promoter-solicitors for charities and especially as to those who solicit for a religious organization whose charitable activities are in furtherance of the spreading of its religious beliefs and doctrines.

XVIII.

Said Court erred in holding that provisions in Section 44.19(2), (a), (b) and (c) are not burdensome and are reasonable, valid and constitutional, and in failing and refusing to hold that they are unreasonable, unduly burdensome, and violate the due process clause of said 14th

amendment and, as applied to appellant, are a denial of its right to freedom of religion and a bar to the exercise of its right to acquire property, guaranteed by said amendment. Said provisions are:

"No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application. [fol. 245]

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board;

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation, or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." (Gospel Army Appeal, p. 16.)

XIX.

Said Supreme Court erred in holding that provisions of Section 44.19 which requires a promoter-solicitor to pay a license fee of $25.00 and post a bond in the sum of $2,000.00, are reasonable, are not burdensome and violate no constitutional guarantee, and in holding that other provisions of said section which authorize the Board to make such investigations of the applicants "affairs" as the Board may "deem advisable" and if from "such examination" the Board is satisfied that the applicant is of good character and "reputation" and has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant shall be granted. Otherwise, the Board shall refuse to issue the license," are valid and constitutional and are reasonable and not burdensome, and erred in failing and refusing to hold that said provisions infringe the right of freedom of religion and right to dispense charity, and that said provisions are unreasonable and unduly burdensome, and that said standard for granting of a license is unfair and arbitrary, and in all respects violative of said due process clause of the said 14th Amendment.

XX.

Said Court erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the 14th Amendment to the Federal Constitution because it fixes no standard and au-

thorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry, and to discriminate against some in favor of others, thus violating the equal protection of the laws clause of said Amendment.

XXI.

Said Court erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a *bona fide* officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit; and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit and said Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable and religious organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the 14th Amendment to the Constitution of the United States.

XXII.

The Court erred in holding that the definition of the term "promoter" in Section 44.01 of said ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and erred in

holding that the classification thus provided is reasonable and the standards provided are adequate, and further erred in failing and refusing to hold that said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their employees the equal protection of the laws as guaranteed by the 14th amendment to the Federal Constitution.

XXIII.

The Court erred in holding that Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to charitable associations and religious organization, and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious-charitable purposes, and erred in failing and refusing to hold that said provisions, and all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Gospel Army and its promoter and other solicitors of the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Federal Constitution.

XXIV.

Section 44.06 of said ordinance authorizes said Board to require the application for permission to solicit to file.

in writing, within 48 hours, "additional information" as to the matters enumerated in Section 44.05, "whenever, in the opinion of the Board the 'Notice of Intention' does not disclose sufficient information for the public" concerning such facts.

Said Supreme Court erred in holding that this section does not authorize said Board to protract its investigation without limit and that both sections, 44.05 and 44.06 do not extend the range of investigation unreasonably, and that they do not constitute unlawful prior restraints upon the exercise of freedom of religion in violation of said 14th Amendment, and that as applied to petitioner said sections do not constitute such restraints upon petitioner's said right, and of its constitutional right under the due process clause of the Federal Constitution to be charitable and dispense charity and to acquire property.

XXV.

Said Court erred in holding that the provisions of Section 24.01, regulating second-hand stores and junk dealers, are not unduly burdensome or unreasonable and that the standards therein provided are adequate, and it erred in failing and refusing to adjudge that said provisions are wholly unreasonable as applied to stores conducted by either religious or charitable organizations which sell donated goods only in furtherance of charitable or religious activities of such organizations and that said provisions, as applied to appellant and its solicitor-storekeeper violate the rights of freedom of religion and property

rights in violation of the 14th Amendment to the Federal Constitution.

XXVI.

That the provisions of Section 44.14 which require that the solicitor file a written report stating in detail all expenses of solicitation and for what uses disbursed are excessively burdensome, unreasonable, time-consuming and devoid of standards, and are thus violative of appellant's right to freedom of religion and to be free from unreasonable restraints thereon, and contravene all of its rights guaranteed by the due process clause of the said 14th Amendment, and that said Court erred in failing to so hold and in upholding the constitutionality of said provisions.

Summary of Argument.

The nature of the case and the issues involved having been shown, the argument about to be made will appear from the following statement of appellant's contentions in the order in which they will be presented, which are:

I.

The Instant Ordinance Constitutes a General Scheme and Plan. Its Provisions Are Not Separable.

II.

The State Supreme Court Erred in Holding That a Law Is Valid Which Classifies as Non-Religious All Solicitations by Religious Organizations Which Are Not *Solely* for Religious Purposes.

III.

If It Be Held That the Dispensation of Charity by a Religious Organization Is an Integral Part of Its Religion and That Solicitations for That Purpose by Its Solicitors Are Within the Protection of the Constitutional Guarantee of Freedom of Religion the Ordinance Involved Is Clearly Null and Void.

IV.

Even if It Were Held That the Solicitations Last Named Can Be Legally Classed by Law as Secular and Regulated as Lawful Enterprises, Said Ordinance Is Null and Void.

(a) Certain provisions impose unnecessary and unreasonable restrictions which are unduly burdensome and oppressive, thus violating the 14th Amendment to the Federal Constitution and the due process clause thereof.

(b) Other provisions violate the same clause because of lack of adequate standard in the delegation of powers.

(c) Certain provisions infringe the equal protection of the laws clause of said 14th Amendment.

V.

The Ordinance Is Void Because It Violates the Inhibition of the 14th Amendment Against Taking Property Without Due Process of Law.

ARGUMENT.

I.

The Instant Ordinance Constitutes a General Scheme and Plan. Its Provisions Are Not Separable.

It is the successor to the ordinances condemned as unconstitutional in *In re Dart*, 172 Cal. 47, and represents a studied endeavor to re-enact that law by devious provisions and camouflaged terms.

The Salvation Army was the victim of the former enactment. It engaged in charity, maintained an "Industrial Home," a "maternity Hospital," and nine stores where donated second-hand articles and junk were sold, in addition to its Gospel work.

One ordinance, created a "charities commission" with power to investigate all charities dependent upon solicitations and to "endorse" such of them "as meet actual needs of the community, attain a reasonable standard of efficiency and are so conducted as to insure the public of the wise use of the funds."

A second ordinance prohibited begging on the public streets and required a permit from the commission to solicit alms, etc., exempting, however, "accredited solicitors of established churches" for "purely religious purposes" from this rule;

The permit was to consist of a written certificate from the commission, certifying that the solicitation "is worthy and meritorious," but was revocable by said commission at any time, at its discretion.

Also it was made unlawful for any association to solicit for a religious or charitable purpose without the endorsement of the commission, or to sell solicited goods,

wares, etc., without such permit, revocable at the discretion of said commission.

Dart, an officer of the Army, was arrested for soliciting and for selling without permits.

The commission had made various demands upon the Army as a condition precedent to endorsement; among these were that a local board should administer its affairs and the funds must be expended in Los Angeles, unless permitted by such board or the commission.

Under this ordinance the commission construed the standard for endorsement set up to mean a charity "that will execute every trust for charity with the least possible delay with the greatest possible efficiency and the least possible deduction for expense."

The Court condemned these ordinances as "an attempt to use the police power in an arbitrary, unreasonable and oppressive manner" and as delegating arbitrary power to the commission. It held that the right to solicit for charity is not beggary and while subject to reasonable regulation, the right to better the lot of the poor cannot be prohibited or suppressed or *licensed*.

It further held that charity is an integral part of religion and when dispensed as a "religio-charitable" activity it is within the realm of religion, to be protected as an exercise of the religious liberty guaranteed in the Constitution, even though the efficiency of standards of perfection set up by the charities commission under said ordinances be not met or approximated.

The instant ordinance as construed by the State Supreme Court arbitrarily segregates charities from religion; it calls an application for a permit or license, "a

notice of intention to solicit," and attempts to cover up the inhbition against soliciting without a license by prohibiting such activity without an "Information Card." [Sec. 44.12; App. p. 10.]

The *Dart* opinion said that "power to endorse" means "grant permits to charitable institutions under which alone they are entitled to live," and the power delegated by the instant ordinance "to endorse" [Sec. 44.03; App. p. 4] has precisely the same design and result, for no unendorsed religio-charitable organization can survive under the impediments of the restraints beginning with Section 44.04 to the end of the ordinance.

Like the former ordinance, to escape such restraints the solicitation must be "purely" for religion. [Sec. 44.16; App. p. 12.] Like it, perfection in economy is demanded. If the colporteur or solicitor receives the slightest compensation, he is made a promoter and both he and the religious body for whose cause he solicits are subjected to such prohibitive restraints as the "notice of intention" [Sec. 44.05; App. pp. 5-7] and payment of a license fee and posting of a bond. [Sec. 44.19; App. pp. 13, 14.]

Section 44.12 [App. p. 10] prohibits any solicitation unless the solicitor exhibits an Information Card to the person solicited for his perusal or reads it to him.

This section is the key provision to the entire ordinance. The tentacles of this section reach forward and backward and grasp every other section, even the Second-hand Store regulations, because the woman who conducts it, Mrs. Colbert, is classed by the board as a promoter. [T. R. pp. 82, 83.]

To secure the Information Card, a Notice of Intention must have been filed. [Sec. 44.05; App. p. 5.]

The Notice of Intention must provide information on nine matters, of which the dissenting opinion of Justice Carter states: "But a glance at this section shows that the much maligned income tax forms issued by the Federal Government are no more complex and demanding than is this Notice of Intention in its requirements of itemized data." He has analyzed these requirements and reference is made to such analysis for confirmation of his assertion that such requirements "indicate that its enforcement will doubtless effect the disappearance of all but organized institutions," and he might properly have said, all but *commission endorsed* institutions.

The ramifications of the Notice of Intention reach into data required to be kept by the organization for which the solicitation is made. [Section 44.08; App. p. 8.]

Section 44.12 [App. p. 10] likewise reaches Section 44.06 which authorizes the board to call for further information without limit, beyond that supplied in the Notice of Intention; it reaches Section 44.03 [App. pp. 4, 5] which empowers the board to make private investigation as to allegations of such notice; it grasps Section 44.02 [App. p. 4] which authorizes the board to recall the Information Card, and Section 44.01 [App. p. 2] which defines and classifies solicitors and promoters; it is also directly connected with Sections 44.13 [App. p. 10], 44.14 [App. p. 10], 44.15 [App. pp. 11, 12], 44.16 [App. p. 12], 44.17 [App. p. 13], 44.18 [App. p. 13] and 44.19 [App. pp. 13-19]. Section 44.16 [App. p. 12] exempts only solicitations made "solely" for evangelical, missionary or re-

ligious purposes, and it exempts the solicitors for such organizations from the burdens of the same list of sections, if the solicitor represents in each case that the entire amount collected, "without any deductions whatever" shall be turned over to the "named beneficiary."

By exempting solicitations "solely" for religious purposes as above stated, it thus excludes the need of the Information Card, but the exemption carries the qualification that if the board is of "the opinion" that the solicitation "is calculated to give the impression" to the person solicited that the purpose is "in whole or in part charitable," the board shall investigate and "give publicity to its findings in such manner as it may deem best to advise the public of the facts of the case." [App. p. 12.]

Section 44.12 [App. p. 10] is qualified by Section 44.07 [App. p. 8] which limits the use of the Information Card; the same is true of Section 44.08 [App. p. 8]; it is qualified and restricted by Section 44.10 [App. p. 9] which requires filing of formal written permission of the association for which solicitation is made, and Section 44.11 [App. p. 9] which adds to such requirements.

Section 44.12 [App. p. 10] goes forward and in Section 44.14 [App. p. 10] piles up the burden of detailed reports to the board upon the solicitor who has used the Information Card and upon the association for which solicitation is made; Section 44.15 [App. pp. 11, 12] adds additional burdens as to the use of the Information Card in soliciting, almost as comprehensive as Section 44.05 [App. pp.

5-7]; Sections 44.17 [App. p. 13] and 44.18 [App. p. 13] are minor limitations on the use of the Information Card in soliciting, and Section 44.19 [App. p. 13] is tied firmly in line with Section 44.12, since every promoter is made a solicitor. [Section 44.01; App. p. 2.]

Section 44.16 leaves appellant and its solicitors subject to Section 44.12, and all others involved with it, but by indirection it becomes the basis for the exclusion of appellant and others similarly situated, from classification as religious organizations, for it exempts from Sections 44.12, 44.02, 44.03, 44.05, 44.06, 44.07, 44.08, 44.09, 44.10, 44.11, no charitable activity and no solicitation for a "solely" religious purpose if 100% of the donations are not applied to the intended purpose.

It thus appears from all of the foregoing that said ordinance must be judged as a whole and that an attack upon the constitutionality of Section 44.12, which prohibits solicitations without presentation of an Information Card, or almost any other section, directly involves many other sections and in fact challenges the entire scheme and system set up.

The State Supreme Court's opinions, both the majority and the dissenting, obviously have so regarded the matter for the plaintiff's complaint only attacked certain sections, including the section requiring a permit (Information Card or license) [Sec. 405; App. p. 5], as violative of the Federal Constitution while the opinions consider and the Court covered all sections in its decision.

II.

The State Supreme Court Erred in Holding a Law Is Valid Which Classifies as Charitable and Non-Religious All Solicitations by Religious Organizations Which Are Not Solely for Religious Purposes.

On the authority of *In re Dart,* 172 Cal. 47 and principles laid down in decisions of this court involving religious freedom, appellant has contended and now urges that dispensing charity is an integral part of that religious freedom contemplated and protected by the First and Fourteenth Amendments to the Federal Constitution. The dissenting opinions of Justices Carter and Edmonds hold the same view. (S. J. pp. 79-81, 105.)

It would be difficult to overcome Justice Hinshaw's exposition of this proposition in the *Dart* case and the majority opinion of the State Supreme Court does not attempt to do so.

It seems impossible to present this doctrine better than, or as well as, Justice Hinshaw has done. Hence we quote from the *Dart* opinion pertinent excerpts as follows:

> "The Salvation Army is a religious organization founded on and believing in the teachings of Christ. It has been established for fifty years. It has its churches and charitable organizations throughout the United States and other countries. Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings, that 'Now abideth faith, hope and charity, these three, but the greatest of these is charity,' and, 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and the rescue of society's outcasts.

It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread only,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work." (*In re Dart*, 172 Cal. 49.)

After holding the Los Angeles Charity Ordinances violative of the Fourteenth Amendment as an attempted exercise of the police power in the regulation of solicitations for charity and the sale of donated articles in second-hand stores, the opinion proceeds:

"But there is another aspect of the question clearly presented, and as clearly demanding consideration. This is the religious aspect. The petition shows that the charities of the Salvation Army are a vital part of its religious life work. One need not write as a theologian in expressing, as we do, the most profound veneration for religion as embodying the highest ethical concepts of a people, and as satisfying their spiritual yearning for a life finer than this earthly one. The two religions exercising the most potent influence in shaping the material and spiritual destinies of the white-skinned races are the Jewish and the Christian. To these as to all others perfect freedom of exercise is constitutionally guaranteed. In both of these religions charity is the central word. It is enjonied, not as a good thing, or a wise thing, or as a kindly thing only, but as a fundamental part of the religion itself. Says the Jewish faith: 'On three things the world is stayed: on the Thorah (the law) and on worship and on the bestowal of kind-

ness.' 'Now the end of the commandment is charity out of a pure heart,' said Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions the bestowal of charity, the devotion of life to charity, are a part of the religion itself? And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that that liberty is not encroached upon and that freedom gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring to it condemnation. In accordance with the dictate of the constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religions be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed." (*In re Dart, supra*, p. 55.)

In Justice Carter's dissent herein, after quoting from the *Dart* opinion, he says:

> "Although concededly acts of charity apart from religious motivation, might be performed by the state, or by a professed atheist or non-religionist, nevertheless, the evidence here establishes beyond contradiction that plaintiff's charities are an integral part of and inseparable part of its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to Christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in Chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: 'And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*' Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction." (S. J. p. 81.)

Again, Justice Carter reasons:

> "It is true that religious liberty embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the

second cannot be" (*Cantwell v. Connecticut, supra*, 310 U. S. 296, 303), and that where the religious organization conducts activities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose." (S. J. p. 79.)

Our research has revealed no case in which the question now beng discussed has been decided by this court. However, on principle, if one integral activity essential to religion cannot be "whittled away," it seems that another, equally essential, must be within the protection of the Constitution.

In *Murdock v. Pennsylvania,* 319 U. S. 103, 87 L. ed. 1292, Colporteurs sold religious books as they distributed religious tracts for a nominal price. The ordinance of the City of Jeannette required that they pay a license fee to engage in this "business."

This court said that "the integrity of this conduct or behaviour as a religious practice has not been challenged," and held that the ordinance, as applied to the Jehovah's Witnesses' colporteurs constituted an unconstitutional prior restraint upon the right of freedom of religion. It is said:

> "They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

In *Cantwell v. Connecticut*, 310 U. S. 296, 87 L. ed. 295, Cantwell was a solicitor for Jehovah's Witnesses. The court said of his activities:

> "We find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion."

The opinion treats such an activity as coming under the concept of freedom of religion which it terms "freedom to act," and which is violated by a law which requires a certificate from an administrative officer as a condition precedent to its exercise for which certificate a fee must be paid.

The activities of the appellant and of its solicitors consist in securing donations of money or goods which are used for religious purposes of the organization. The sale of such goods, like the sale of books by Jehovah's Wit-

nesses, are for the same purposes. It was said in the *Murdock* opinion,

> "It is a distortion of the facts to describe their activities as the occupation of selling books."

Yet, the Jeannette Ordinance so classified such sale for the purposes of regulating charities, and the instant Los Angeles Ordinance attempts to do the same, by arbitrarily providing that all solicitations for charitable purposes are non-religious, and that unless the purpose is purely religious, as Justice Edmonds puts it, "to meet the doctrinal church activities," it is subject to police regulations adopted to any business enterprise.

Appellant maintains that money spent on religio-charity is as fully within the protection of the guaranty of freedom of religion as when used to print tracts or to pay commissions to the colporteurs of Jehovah's Witnesses[3] although; as above stated, the majority opinion of the State Court makes no attempt to show error in the *Dart* decision, it holds directly contrary thereto by upholding as constitutional the ordinance of which it asserts:

> "The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely

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[3]Such colporteurs receive one-half of their collections to pay traveling and living expenses. See Note 7, *Murdock v. Penn*, 319 U. S. 104.

for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit 'any contribution for any charitable purpose' without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for 'philanthropic, social service, benevolent, patriotic' purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give the public the impression that funds are sought for charity, the board shall 'investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.' The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance." (S. J. p. 70.)

Appellant is content to rest this issue on the balance of merit between the majority opinion herein as against Justice Hinshaw's pronouncement and the dissenting opinions of Justices Carter, Schauer and Edmonds.

III.

If It be Held That the Dispensation of Charity by a Religious Organization Is an Integral Part of Its Religion and That Solicitations for That Purpose by Its Solicitors Are Within the Protection of the Constitutional Guarantee of Freedom of Religion the Ordinance Involved Is Null and Void.

If the doctrine of the *Dart* decision is sound it hardly requires argument to show that the instant ordinance throughout, violates the guarantee of freedom of religion and its exercise.

The provisions of the law supply its own condemnation. It requires one who would solicit to obtain a permit from the Department of Social Service as a condition precedent to soliciting! This is an unlawful restriction upon the exercise of the right of freedom of religion. (*In re Dart*, 172 Cal. 47; *Cantwell v. Connecticut*, 310 U. S 296.)

The Department is empowered to refuse a permit. The ordinance contains no provision which directs that upon compliance by an applicant with designated requirements an Information Card (permit) shall be issued.

Ten days before the applicant may begin soliciting he must file the Notice of Intention [Sec. 44.05; App. p. 5], which is the application for a permit, and the Department may investigate the matter and no time limit is placed on the investigation, and may require additional information.

without limit as to such requirements. [Sec. 44.03; App. pp. 4; 5.]

These provisions alone would bar an itinerant preacher or solicitor from serving their calling in Los Angeles, and thus constitute unlawful prior restraints. (*Murdock v. Pennsylvania*, 319 U. S. 104.)

In investigating, the Department may have access to all books, records and papers of the applicant or the religious organization for whom he expects to solicit. [App. p. 5.]

And if he ever receives an Information Card he must read, or give any person solicited time to read that document [App. p. 10], which contains volumminous information on eleven matters, and as many more as the Department chooses to add and which Justice Carter characterizes as being as complex and demanding as the much maligned federal income tax forms. He states that to prepare the data required to be set forth in the application for permit, Section 44.05 requires such an educational background as to cause wonder as to how the average almsman could supply it. [T. R. p. 109.]

Solicitors who receive compensation are classed as "promoters" and they must secure a "license", for which the fee is $25.00, and post a bond in the sum of $2,000.00, to insure against theft; they are subject to unrestricted investigation by the Board of Social Service Commissioners and must file with it a voluminous statement upon specified matters and such other "information" as the Board may

quire, and must satisfy the Board that the applicant is of "good reputation" and character. [App. pp. 13-15.]

It is believed that the foregoing, which is merely a sample of the burdensome prior restraints found in the ordinance, suffices to show that it has nothing in common with those "identification" and "registration" ordinances, and "regulatory measures" which are said to mark the limit of permissible restraints upon the exercise of the right of religious freedom. (*Cantwell v. Connecticut*; *Murdock v. Pennsylvania*, both *supra*.)

Again, reference is made for support of the above assertion to the dissenting opinions [T. R. p. 126], in this case which analyze the ordinance sections, whereas the majority opinion makes no pretense at doing so.

Under the next caption other ordinance provisions will be pointed which, it will be contended, are violative of federal constitutional guarantees, even if said solicitations for charity be regarded as purely secular.

For the sake of brevity reference is made to the elucidation therein presented, and, it is believed that it will be obvious that such other provisions are, as Justice Edmonds declared, "clearly invalid", as violations of the right of freedom of religion.

IV.

Even if It Were Held That the Solicitations Last Named Can Be Legally Classed by Law as Secular and Regulated as Lawful Enterprises Said Ordinance Is Null and Void.

Legislative enactments may not, under the guise of the police power, impose unnecessary, unreasonable or unduly burdensome restrictions upon the pursuit of useful activities or of private property.

Washington v. Roberge, 278 U. S. 116;

Holden v. Hardy, 169 U. S. 366;

McKay Jewelers, Inc. v. Bowron, 19 Cal. (2d) 595;

In re Fuller, 15 Cal. (2d) 425;

Skalko v. City of Sunnyvale, 14 Cal. (2d) 213;

Ex parte Dickey, 144 Cal. 234.

A legislative body may not delegate to administrative officers or boards the legislative function or discretion unrestricted by definite standards to control their decisions.

Schecter v. U. S., 295 U. S. 494, 79 L. Ed. 1570;

Panama Ref. Co. v. Ryan, 293 U. S. 388, 79 L. Ed. 449;

Yeck Wo v. Hopkins, 118 U. S. 356.

General and indefinite terms in a statute do not suffice to provide a standard for official action.

Schecter v. United States,

Panama Ref. Co. v. Ryan, both *supra*;

Morgan v. United States, 304 U. S. 1;

McDonough v. Goodcell, 13 Cal. (2d) 741.

With the foregoing fundamental principles as a foundation, various provisions of the instant ordinance will be tested. It may fairly be assumed that the activity and "business" of relieving human distress and alleviating the needs of the poverty stricken is among the most useful of endeavors. Hence appellant contends that the provisions of the ordinance to be enumerated are invalid:

In consideration of the nature of the business of supplying, clothing, warmth, medical care, food and similar necessities to men, women and children in distress, the following requirements of Section 44.05 are so unreasonable and burdensome as to frustrate the purposes and efforts of the solicitor who seeks donations of money of goods in conducting their charitable endeavors.

Section 44.03 requires the applicant for a permit to solicit to file his application "Ten days prior to the beginning of the solicitation." [App. p. 4.] The freezing must continue to freeze, the starving remain without food, and the sick suffer and perhaps die because of this prohibition.

In the application section, 44.05, requires "complete information" upon the following matters to be stated:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." [App. pp. 5, 6.]

A solicitor may not even request in advance that a donation be made, if and when, a permit is secured for Section 44.01 provides:

"A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same received any contribution or makes any sale referred to in this Article." [App. p. 2.]

The delays incident to and authorized by the ordinance which retard solicitations for charity are unreasonable, unnecessary and arbitrary.

The Department may investigate the allegations of the Notice of Intention and no limitation as to time is provided (Sec. 44.03(a)); it may check the books and records of the applicant, or the person in distress or the organization which the applicant assists (Sec. 44.03(b)). [App. p. 4.]

A person who has finally obtained a permit or license to solicit must read the entire contents of the Information Card to anyone solicited, or allow that person time to read it under Section 44.12 [App. p. 10], and the Information Card contains all "pertinent facts set forth in the Notice of Intention, which have been enumerated above, and "any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made." [App. p. 5.]

No limit as to the volume, or the scope of the Information Card is fixed by the ordinance other than the personal opinion of the Board members as to what would be of assistance to the public.

After the reading of the above mentioned document the solicitor must tender a receipt to the donor, but the receipt is not an ordinary acknowledgment of money received. Section 44.15 dictates that it must contain substantially the following:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of

such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making contribution for his perusal prior to receipt by the solicitor of the contribution receipted for." [App. p. 11.]

If the solicitor receives compensation he is classed as a promoter. [App. p. 2.] Among the burdensome and unreasonable provisions governing promoters are:

His application for a license must contain, "in addition to such information as the Board may require":

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." [App. p. 14.]

The unreasonable elements of this requirement are, that the Board is permitted to require information upon any subject ancestry of the applicant, his proficiency in mining, law, or dentistry, or his views on politics or religion.

Also, the requirement that the applicant establish "good reputation" is unreasonable. As Justice Carter points out; this is a matter which as to a solicitor for charity should not be of substantial concern, and as he says "a most wicked man of public ill repute may espouse a very worthy cause," and many have reformed from the gutter and have done forceful and effective work. [T. R. pp. 117 and 118.]

PROVISIONS VIOLATIVE OF THE GUARANTEE OF DUE PROCESS BECAUSE OF LACK OF ADEQUATE STANDARDS.

In addition to the provision of Section 44.19, which authorizes the Board to require information from an applicant for a promoter's license, without restriction or standard as to the character or subject matter of the information, the same section authorizes the Board to base its decision granting or denying the license, in part upon possibly irrelevant and prejudicial information. [App. pp. 16, 17.]

The same section authorizes the Board "to make such further investigation of the applicant and its or his affairs as the Board deems advisable" and further makes the result of such investigation a part of the grounds for granting or denying a promoter's license. [App. p. 16.]

What "affairs" are to be investigated and acted upon? The term is broad and may well include matters of privacy which would not remotely affect the applicant's qualifications as a solicitor or promoter.

Also, the Board is empowered to revoke a promoter's license upon the ground that he or "his agents or employees have been guilty of an act or omission in the conduct of his business which is unfair, unjust, inequitable or fraudulent." [App. p. 17.]

Justice Carter says of this language:

> "These grounds, except the last one stated, are vague and uncertain."

Section 44.14, which provides that solicitors shall file "a written report," stating "in detail"

> "all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed."

provides no adequate standard as to what degree of detail is required, and if its language be taken literally, it is most unreasonable and onerous beyond logical needs. [App. p. 10.]

Keeping ever in mind that the business regulated is charity, it seems obvious that minute details of expense must be numerous and that the cost and time required for compilation of such a report could more profitably be used for charity.

Section 44.03 authorizes the Department, in issuing a permit to solicit, to state, "they endorse such charitable association," or that the issuance of such card is "not an endorsement" thereof, and no standard is provided to direct the decision of the Department, but it is thereby empowered to act arbitrarily and capriciously. [App. p. 5.]

By Section 44.03 the Department is given power to set forth in the Information Card information gleaned from its own investigation, whose scope is in no way limited, if "in the opinion of the Board" the information "shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made." [App. pp. 4, 5.]

Here nothing but the ideas of Board members as to what considerations should be regarded in deciding the "worthiness of the purpose" of the solicitation are to determine what information shall be set forth.

Such a standard is uniformly condemned by the decisions.

Schecter v. United States, supra;
Panama Ry. Co. v. Ryan, supra;
Morgan v. United States, 304 U. S. 1.

The provision of Section 44.06 herein above quoted authorizes the Board to call upon an applicant for a permit for such information in addition to that set forth in the Notice of Intention, if the Board is of the opinion that such Notice of Intention does not disclose sufficient information "for the public concerning the facts required to be stated," and the additional information must be filed within 48 hours after it is so requested! [App. p. 6.]

This provision is unreasonable in the brevity of the time allowed the applicant to file the information called for which may pertain to matters not within his knowl-

edge. In fact, all of the items required to be set forth pursuant to Section 44.05, which have been quoted, must be secured from the organization conducting the solicitation.

Said provision of Section 44.06 also gives the Board unlimited discretion to decide what information is, or is not, sufficient for the purposes of the public. [App. p. 6.]

PROVISIONS WHICH INFRINGE THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

Section 44.01 of the ordinance involved violates the above named guarantee in its classification of solicitors.

A "promoter" is defined as "any person who for a pecuniary compensation . . . solicits contributions . . . for or on behalf of any other person or any charitable association, corporation or institution . . . provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participations or a percentage basis in any fund solicited . . ., provided further, that no person who is a bona fide paid officer or employee of a Social Service Commissioner, shall be considered a promoter within the meaning of this article." [App. p. 2.]

We have here a law which merges two violations of the equal protection of the laws guarantee in a single provision.

The only distinction which is made between a "promoter" and a "solicitor" is that the former receives compensation for his efforts. This definition includes the colporteur in the *Murdock v. Pennsylvania* case and it

makes of every solicitor for charity who does not work gratuitously a promoter.

Yet a promoter must pay a flat license fee of $25.00, and post a bond in the sum of $2,000.00; his license may be revoked for "unfair or inequitable" solicitation; his "affairs" may be investigated and used by the Board as one ground for refusing to license him, as has been shown herein, none of which provisions apply to "solicitors". [App. pp. 13-15.]

By virtue of the arbitrary nature of this definition of a solicitor-promoter, appellant's store keeper was classed as a promoter.

But promoters who are employees of a social service agency endorsed by the Board cease to be promoters or solicitors, by reason of such endorsement, and no reasonable or adequate standard is provided upon which the Board's decision in the matter is to be governed. [App. p. 2.] Those not endorsed are denied the equal protection of the laws in respect to endorsement and to the classification of their employee-solicitors.

The authorization of the Department to endorse a charitable association or to withhold endorsement contained in Section 44.03 has been pointed out as invalid on other grounds. [App. p. 5.] It also arbitrarily creates two classes of Information Cards, and two classes of charitable associations, the endorsed and the unendorsed, the assignment to which classes of any solicitor or association is not regulated by any adequate standard.

The provision of Section 44.06 respecting requests for additional information on 48 hours' notice, has been pointed out. [App. p. 7.]

This grant of power, being without standard, is arbitrary and provides opportunity for official discrimination in its use.

Similarly, and for the same reason, the investigating power of the Board, authorized by Section 44.16 as to applications for solicitors' permits [App. p. 12], and by Section 44.19 [App. p. 16], in passing upon applications for promoters' licenses, afford opportunity for and give power to discriminate, and to favor or prejudice any applicant, without regard to the merit of his cause or his qualifications.

Both provisions have been discussed on other grounds.

Section 44.03, which empowers the Department to issue Information Cards [App. p. 4], also grants it jurisdiction to refuse to do so, and no standard is to be found in said section or elsewhere in the ordinance, express or implied to govern the Department's action.

Justice Traynor, writing the majority opinion, states that the Board may not deny an application for an Information Card because the ordinance does not expressly empower it to do so. [T. R. p. 96.] However, the power is implied, since the Board is given unrestricted discretion to require any additional information [App. p. 7], which it deems necessary, and to conduct undefined and unlimited investigations, and to base its decision thereon, as has been shown herein.

V.

The Ordinance Is Void Because It Violates the Inhibition of the Fourteenth Amendment Against Taking Property Without Due Process of Law.

It may be said that each of the ordinance sections and provisions which operate as illegal prior restraints of the exercise of religious freedom by appellant through its officers, promoters and solicitors violates the guarantee of the Fourteenth Amendment that property shall not be taken without due process of law, for that clause necessarily includes the right to the acquisition of property.

Hence, appellant contends that the provisions of the sections heretofore assigned under Caption III as prohibited prior restraints upon the exercise of the right of freedom of religion are infringements of appellant's right to acquire property as guaranteed by the Fourteenth Amendment to the Federal Constitution since, except for their restrictions, appellant's solicitors would be free to secure donations from the public to be used in furtherance of its religious activities.

Appellant further contends that every provision of the ordinance which is void for any other reason heretofore assigned herein violates the due process clause of the Fourteenth Amendment in its guarantee of the protection of property and property rights.

This necessarily results as the appellee's answer claimed the right to prosecute appellant for failure to comply with any provision of the ordinance and had so notified appellant. [T. R. pp. 5, 6.]

The regulations contained in Section 24.01 which pertain to junk dealers, second-hand stores and pawn brokers,

as applied to appellant's store, are, if invalid, obviously in contravention of said due process clause.

It remains to specify the unconstitutional provisions and to elucidate the reasons which sustain appellant's contention that they are invalid.

Heretofore, the decision in *In re Dart*, 172 Cal. 47, has been unchallenged as a sound statement of the law as to all matters therein decided.

One of the principle items in controversy was the validity of the ordinance as applied to the second-hand stores operated by the Salvation Army. That ordinance as does the present one, required that a permit be secured from the city charities commission to entitle any association or corporation, religious or secular, to sell personal property. The City Commission caused the arrest of one of the Army's officers, charging him with selling and offering for sale goods and wares which had been solicited and donated without a written permit. (*In re Dart*, 172 Cal. 47, 49.)

The opinion includes this arrest and the requirement of the ordinance that a permit be obtained for the purposes above named in its assertion that the city has no power to require a permit as condition precedent to a charitable organization engaging in charitable work. Justice Hinshaw says:

> "Unhesitatingly we answer this cannot be done, that it constitutes an attempt to use the policies power in any arbitrary, unreasonable, and oppressive manner. It necessarily contains an assertion of the power to prohibit and suppress vocations and occupations which, entirely aside from their religious character,

> are from a worldly point of view in and of themselves not only harmless but positively beneficial to humanity."

Regarding the question in its religious aspect, the opinion shows that charity is the central concept of religion and condemns the entire ordinance as violative of the right of religious liberty. (172 Cal. p. 55.)

This doctrine is sound. It is unreasonable, arbitrary and oppressive to apply to a store in which donated articles are offered for sale the restrictive, and to such a store, prohibitive, regulations contained in the instant ordinance, designed to safeguard the public against fraud and crime.

As the majority opinion in this case states:

> "Regulation of the business of junk dealers and secondhand junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming outlets for stolen goods," (citing many authorities). [T. R. p. 82.]

It is unreasonable to the point of absurdity to suggest or imagine thieves, burglars and robbers, taking their loot to a dispensary of charity which receives nothing except as donations. It is equally absurd to assume that solicitors for charity would seek out as objects of solicitation the haunts of criminals, and to suppose that if they were so foolish as to do so, success would crown their efforts. The entire foundation for such regulations being shackled upon stores selling only donated articles is fallacious and permeated with the rot of unreason.

But regarding Section 24.01 as an ordinance intended to reasonably regulate natural outlets for stolen goods, it is still arbitrary and violative of due process.

Of the enactment, Justice Edmonds' dissenting opinion states that it is unconstitutional because

> "it sets no standard to which an applicant for a license must conform. * * * It states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application and by the use of the word 'may' impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in secondhand goods such legislation has been uniformly held not to measure up to the requirements of constitutional guarantees." [T. R. p. 135.]

The ordinance is lacking in all of these essentials, which a mere perusal of its language reveals.

Under the title "Requisites for Permits" the only requirement is that a written application be filed specifying the street and number of the place where the business is to be conducted, and the payment of a fee. The provision then reads:

> "Thereafter the Board may issue a permit to the applicant."

The grounds for revocation are: That the permittee has violated any law relating to or regulating any such business or carrying on the business in an unlawful manner. [App. pp. 21, 22.]

The other matters enumerated by Justice Edmonds as unconstitutional are simply not mentioned in the section.

The deficiencies which he points out have been "uniformly held not to measure up to the requirements of" the constitutional guarantee against property being taken without due process of law by an ordinance or law. (*In re Dart*, 172 Cal. 47: *Yick Wo v. Hopkins*, 118 U. S. 356; *Hewitt v. State Board of Med. Examiners*, 148 Cal. 593.)

For the foregoing reasons the provisions are fatally defective for lack of standards, alone. (*Schecter v. U. S.*, 295 U. S. 494; *Panama Refining Co. v. Ryan*, 293 U. S. 388.)

Conclusion.

Appellant believes that the legal propositions upon which he has relied as set forth herein are fundamental and are settled law in all jurisdictions. Hence of the many decisions available for their support a limited number only have been selected for citation.

However not many Courts have considered the question presented under Caption II herein, to-wit, the inseparability of charitable activities of a religious organization when performed in furtherance of its doctrinal activities from the latter.

Our extended research has discovered no direct decision upon that issue except *Matter of Dart*, 172 Cal. 47. The dissenting opinions in this case are, however, well considered and highly illuminating.

It is believed that the Ordinance involved represents a studied effort whose definite objective is to relieve residents and business from the annoyance of numerous solicitations, which are viewed as pestiferous and sometimes costly, since for various reasons persons asked to donate find it difficult to refuse.

In the accomplishment of this purpose and result, which undoubtedly is genuinely regarded as meritorious and justifiable by many who feel victimized through solicitations, no scheme or plan can well be devised other than one similar to that set up in the instant Ordinance and its predecessor of the *Dart* case consideration.

Such a plan necessarily treats charitable activities as business enterprises, and restricts the field to an approved list or group of organizations sympathetic with the plan or controlled by its adherents to work in harmony therewith, and just as certainly eliminates the "little people" and organizations.

Conflict is unavoidable between this concept and religion, which sees in each individual a soul to be saved, and what better approach than through charity? To dispense it they must have funds.

It is especially true of the little people and organizations that they or their membership have little to give. Hence this avenue to reach the poor people, whom, as Lincoln said, God must love because he made so many of them, and the religionist is taught to love, is closed if the purposes of such ordinances can be carried out without in-

fringement of the right to freedom in the exercise of religion.

However, appellant's counsel believes that no plan having the purpose above indicated can be devised which does not delegate to administrative officers wide discretion. If definite standards are provided and if charitable activities are not to be guided into the hands of the approved list, the plan must fail, and every reformed and converted former debased individual or other all-out religionist who feels called by God to administer to the sick and afflicted would again swarm into stores and intercept the shopper or housewife on the streets with requests for donations.

At last the issue is in the hands of this Court, where appellant is content to have it rest.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellant.

APPENDIX.

Exhibit "A."

CHARITIES

L. A. Muncipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618 and 84,121.

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" (Added by Ordinance No. 80,920, approved March 1, 1939) shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" (Added by Ordinance No. 80,920, approved March 1, 1931) shall mean any person who for pecuniary compensation or consideration received, or to

be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph, concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription,

ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board.

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

(c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this sub-section, of this Article for the purpose of meeting any extra emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any state-

ment set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs the general public and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such

person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a

true copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Inention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on

any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations — Accounting System—Maintenance Of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk, or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or

in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission by to Solicit:

No person shall use the name of any association in charge or control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth in the Information Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations — Report — Time — Expenses—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and

such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of:

No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of such Information Card issued by the Department

and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the statements regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contribution solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its

opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street within the Central Traffic District, as said district is defined in Section 80.00, for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. (Added by Ordinance No. 80,920, approved March 1, 1939.) Telephone Solicitations:

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19. (Added by Ordinance No. 80.920, approved March 1, 1939.)

(1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In

such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

(3) Bond.

(a) (As amended by Ordinance No. 81,618, approved Sept. 3, 1939.) At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand ($2,000) Dollars running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand ($2,000) Dollars. Said bond

shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

(c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery,

by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputation,

or

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions; otherwise, the Board shall

deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its discretion, waive such ground and grant the application: this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination.

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(q) (Added by Ordinance No. 81,618, approved Sept. 15, 1939.) Solicitors:

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board, and thereafter maintain a bond satisfactory to the Board in the sum of Five Hundred ($500.00) dollars, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

(e) The registrant must notify the Board in writing of any change of address and if the registrant be employed or engaged by more than one promoter, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

PAWN BROKERS—SECOND HAND DEALERS

L. A. Municipal Code—Ord. No. 77,000

As Amended to and Including Ordinance No. 84,732

Sec. 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers, Collectors:

(a) (As amended by Ordinance No. 69,314, approved March 3, 1938.)

Definitions. For the purpose of this Section the following words shall mean:

"Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for

any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or their assignees at prices agreed upon at or before the time of such purchase.

"Pawn Shops" shall mean any room, store, or place in which the business of a pawnbroker is carried on or conducted.

"Secondhand Dealer" shall mean a person engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.

None of the provisions of this Section shall apply to auto wreckers, dealers in used motor vehicles, or to secondhand book dealers.

(Added by Ordinance No. 83,898, approved December 26, 1940.) "Trade-ins"—Tires and Batteries. The acceptance, sale or disposal of used automobile tires or automobile batteries taken in part payment for new tires or batteries shall not be deemed to constitute the doing of any business defined in this subsection.

(b) Permit Required. No person shall engage in, conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section without first applying for and receiving a written permit from the Board as hereinafter provided.

(c) Requisites of Permits.

(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection "a" of this Section shall file an application in writing with the Board specifying by street and number the place

where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address.

(2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified.

(3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.

(4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted.

(5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section shall buy, sell or otherwise deal in secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits.

(d) Fees. The Board shall charge the following fees:

(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10;

(2) Applications for special permits, the sum of $50.00;

(3) Applications for annual permit renewal, the sum of $25.00;

(4) Applications for changing location of place of business for which a permit has been granted, the sum of $10.00;

(5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section.

(e) Compliance with Laws:

(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought.

(2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section.

(f) Revocation of Permits. Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section:

(1) Grounds. If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person;

(2) Procedure. Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code;

(3) Reissuance of Revoked Permit. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.

(g) Report of Purchases.

(1) Persons described in subsection "a" of this Section shall secure blank report forms from the Chief of Police. Such reports shall be made out and delivered to the Chief of Police each day before 10 A. M. and shall contain the following data:

(a) A full, true and complete report of all goods, wares, merchandise or things received on deposit, pledged, purchased or received during the day preceding the filing of such report.

(b) The hour of the day such article was received, pledged or purchased.

(c) The true name and address of the party making the sale, delivery or pledge as nearly as the same is known or can be ascertained by such person together with a description of such party which shall include his height, age, sex, *completion*, style of dress, color of mustache, if any, and if lacking, such fact shall be noted.

(d) The number of the pawn ticket if a pledge is involved, and the amount loaned or pledged.

(e) Each article pledged, received or purchased shall be described. If such article is engraved or contains any settings, the description thereof shall include such number, figure, word or initial engraved thereon and shall show the kind and number of settings.

(2) Such blank report forms shall bear a caption providing blank spaces in which shall be written or printed, the date of such report, the name and place of business of the person making the same and the hour of day when the same is received by the Chief of Police. Such forms shall be so printed and subdivided as to contain spaces with proper captions for the information required by the provisions of this subsection. A copy of this Section shall be printed upon the back of each such blank form.

(3) Every junk dealer or persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining such metal must comply with provisions of subdivision (1) of this subsection, except that where purchases are made from a junk collector in lieu of the description required in subsection "1(c)" of this subsection the true name and city license number of such junk collector shall be sufficient.

(h) Record of Purchases. Persons defined in subsection "a" of this Section shall keep a complete record of all goods, wares, merchandise and all things pledged to or purchased or received by him, which record shall contain all of the matters required to be shown in the reports referred to and described in subsection "g" of this Section. Such records of all articles pledged, purchased or received by such persons shall be open at all times during business hours to the inspection of any member of the Police Department.

(i) Filing of Reports. The Chief of Police shall file in a secure place in his office all reports and records received pursuant to the terms of this Section, and the same shall be open to inspection only by members of the Police Department or upon an order of a court of competent

jurisdiction made for that purpose. Every report and record required by the terms of this Section to be filed or kept shall be written or printed in a clear and legible manner entirely in the English language.

(j) Signs. Persons defined in subsection "a" of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building the sign shall be placed at the entrance to said department.

(k) Sale of Goods by Dealers.

(1) Pawnbrokers or secondhand dealers shall not sell or otherwise dispose of any article or thing within twenty-one (21) days after such article or thing has been purchased or received by such pawnbroker or secondhand dealer.

(2) Junk dealers or junk collectors shall not sell or otherwise dispose of any article or thing within three (3) days after such article or thing has been purchased or received by such junk dealer or junk collector.

(3) Junk dealers or other persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining the same, shall retain and keep in a separate place on their premises the entire purchase of each day. Each day's purchase shall be kept in such place in its original condition for a period of three (3) days after the purchase or receipt thereof, and shall

at all times be open to the inspection of the Police Department.

(1) (As amended by Ord. No. 87,342, approved Jan. 21, 1943)

Hours of Business. No person operating, managing, or carrying on any business defined in Subsection (a) hereof shall accept any pledge, or loan money upon personal property, or purchase or receive any article, or carry on or transact such business in any manner during the hours or days hereinafter specified, nor shall any person carry on or transact any business of whatever character, or buy or sell any article new or used, at any place of business for which a junk dealer's permit, a pawnbroker's or pawnshop permit, or a second-hand dealer's permit is issued, during any of the following hours or days, to-wit:

(1) Between 6:00 o'clock P. M. and 8:00 o'clock A. M. on any day from Monday to Friday, inclusive.

(2) Between 7:00 o'clock P. M. Saturday and 8:00 o'clock A. M. of the following Monday, except, however, that any such place of business may be kept open between 7:00 o'clock P. M. and 9:00 o'clock P. M. on Saturday, provided that the only business done therein during such overtime hours be that of selling goods, wares and merchandise or other personal property;

(3) On any of the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas;

Except, however, that from December 14th to December 24th inclusive, excluding Sundays, any such place of business may be kept open until 10:00 P. M., provided the only business done therein during such overtime hours

be that of selling goods, wares and merchandise, or other personal property.

(m) Overlapping Businesses. If any person shall engage in, conduct, manage or carry on at the same time more than one of the businesses defined in subsection "a" of this Section such person shall be deemed to be engaging in, conducting, and carrying on each such business separately and apart from the other business; and such person shall comply in all respects with the provisions of this Section relating to such business and no person shall fail, refuse or neglect otherwise so to do.

(n) Compliance with Section. No person engaging in, conducting, managing or carrying on any of the businesses defined in subsection "a" of this Section shall fail, refuse or neglect to file any report in the form, in the manner, at the time and otherwise in all respects in accordance with the requirements of this Section; or fail, refuse or neglect to keep records in the form and manner required by this Section; or fail, refuse or neglect to exhibit to a member of the Police Department immediately upon demand for inspection, any record of any goods, wares, merchandise, articles or things pledged to, or purchased or received by such person.

(σ) Exemptions.

(1) (As amended by Ord. No. 82,638, appr. Apr. 3, 1940)

The provisions of subsection (g) shall not apply to the receipt or sale of a secondhand article by person who receives or purchases such article from any other person when such other person has made the required report to the Chief of Police and shall have held the articles for the length of time as provided in subsection (k) hereof.

(2) The provisions of subsection (g), (h), and (k) of this Section shall not apply to the purchase or sale by junk dealers or junk collectors of any rags, bottles, other than milk or cream bottles, secondhand sacks or bags, other than cement sacks or bags, barrels, cans, shoes, lamps, stoves or household furniture with the exception of all musical instruments, typewriters, accounting machines, adding machines, check writing machines, comptometers or other similar equipment or the purchase or sale of sacks, bags, or rags other than cement sacks or bags.

(p) (Added by Ord. No. 83,646, approved Nov. 18, 1940) Claims to Possession of Stolen Property.

(1) In all cases where a claim is made to property pawned with or sold to a person claiming to be the owner thereof and asserting that the property was stolen, the Board shall, after a hearing upon notice, determine the validity of such claim and the immediate disposition which should be made as to the possession of the claimed property, as hereinafter provided.

(2) If the Board shall determine that such property was stolen, that the claimant is the owner thereof, and that there is no collusion between the claimant and the person by whom such property was stolen, the Board shall direct that such property be returned forthwith to the claimant without compensation of any kind being paid therefor.

(3) In the event such direction be disobeyed, the permit under which such pawnbroker, secondhand dealer, junk collector or junk dealer is permitted to conduct his said business may be revoked or suspended by the Board without further hearing.

(4) The Board may designate any member of the Police Department to hear the evidence at any or all hearings that may be held hereunder, and to report his findings thereon to the Board; but in all cases, the Board shall determine the disposition of the property.

(5) If, prior to the determination by the Board upon any claim made hereunder, an action at law is brought by or against the person in possesion of the property to establish the ownership of, or the right to possession of, the property, the Board shall upon notice thereof suspend proceedings upon the claim.